



February 28, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-0751

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144487.

The City of El Paso (the "city") received a request for all information, including interdepartmental e-mails, relating to a specified internal affairs file. You indicate that you will release some of the information. However, you claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have divided the information into three parts—Exhibits B, C, and D. With respect to Exhibit B, part of the internal affairs investigation, and Exhibit C, part of the criminal investigative file, you assert section 552.108. Section 552.108 provides, in part,

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication

A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects information pertaining to a closed case that did not result in a conviction or deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). You contend that "most portions" of Exhibit C are excepted under section 552.108(a)(2) because "[t]here *has been* no conviction or deferred adjudication probation resulting from this investigation." (Emphasis added). You also appear to contend that the same information is excepted under section 552.108(a)(1) because the reports relate to a pending investigatory case. Nevertheless, the reports indicate on their face that the complainant in the criminal case gave a non-prosecution statement and the prosecutor declined to prosecute the case. Thus, while the reports indicate that the case may be closed, you indicate in your arguments that the case is still open. Based on these facts, we determine that you have failed to adequately demonstrate either that the case is pending and is thus excepted under section 552.108(a)(1) or that the case is closed and is thus excepted under section 552.108(a)(2). Therefore, you may not withhold either Exhibit B or Exhibit C under section 552.108.

You next contend that portions of Exhibits B, C, and D are excepted under sections 552.101, 552.117, and 552.130 of the Government Code. Section 552.117(2) requires the department to withhold information pertaining to a current or former peace officer if the information relates to the home address, home telephone number, or social security number of that peace officer, or reveals whether the peace officer has family members.¹ We have marked information in Exhibit B that must be withheld under section 552.117(2). However, home address, home telephone number, social security number, and family member information in Exhibits C and D is not protected by section 552.117(2) because section 552.117(2) protects only the information of a peace officer in the context of his role as a "peace officer" and not as a "suspect" or "complainant" in a criminal investigation.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

¹ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

(2) a motor vehicle title or registration issued by an agency of this state[.]

Exhibits B and D contain driver's license information. The driver's license information that you have highlighted in Exhibit B is clearly related to a driver's license issued by the State of Texas, and therefore must be withheld under section 552.130 of the Government Code. However, with respect to the driver's license number contained in Exhibit D, there is no indication whether the driver's license was issued by an agency of the State of Texas. If the license was issued by the State of Texas, you must withhold the driver's license number contained in Exhibit D under section 552.130 of the Government Code.

Exhibit D also contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the home address and telephone number, social security number, and family member information we have marked in Exhibit B under section 552.117(2). Likewise, you must withhold the Texas driver's license information contained in Exhibits B and D. Finally, you must withhold the social security number contained in Exhibit D to the extent it was obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/seg

Ref: ID# 144487

Encl: Submitted documents

cc: Mr. Tom Barbee
Grievance Committee Chair
El Paso Municipal Police Officers' Association
747 East San Antonio Avenue, Suite 103
El Paso, Texas 79901
(w/o enclosures)